IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1935 OF 2004

Mumbai Lok Vasundhara Sewa Samiti ..Petitioner.
Vs.
Municipal Corporation of Greater Bombay & Ors. .. Respondents.

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Mr. O.R. Tiwari for the petitioner.
Mr. K.K. Singhvi, Senior Advocate with Ms. P.A. Purandare for respondent Nos.1 to 3.
Mr. Joaquim Reis i/b Mr. Y.M. Chaudhari for respondent No.4.

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CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J.

22nd December, 2004.

P.C. :

1. In this petition under Article 226 of the Constitution, the Petitioner has questioned the legality of the plans sanctioned by the Municipal Corporation by which approval has been granted to the Fourth Respondent for the construction of a shopping center at C.T.S. Nos.610 and 610/1 to 6 at Malad (West). The grounds on which the plans are sought to be questioned are that the proposal did not envisage leaving a set back area or compulsory open

space. These are the only grounds which have been urged in support of the petition at the hearing.

2. An affidavit in reply has been filed on behalf of the Municipal Corporation by the Executive Engineering, (Building Proposal) in which it has been stated that the plot of land bearing C.T.S. No.610 and 610-1 to 6, situated at Station Road, Malad (West) is situated in the commercial or C-I zone. This plot of land was entirely covered with shops and residential tenements. On 2nd May, 2003 a proposal was received by the Municipal Corporation for the development of the plot by demolishing the existing structures and seeking the rehabilitation of the existing tenants with alternate accommodation in the new building. The proposal envisaged the construction of a commercial building comprising of a ground floor and three upper floors. Shops would be constructed on the ground floor, whereas on the upper floors the existing commercial tenants were to be rehabilitated. In the affidavit in reply it has been stated that a part of the existing plot is reserved for a municipal road. The aforesaid part admeasuring 41.51 sq. mtrs. was encumbered with

existing structures. As a part of the development proposal, the developer has cleared the encroachments and the set back area has been handed over to the Municipal Corporation. Moreover, it has been clarified in the affidavit in reply that the required open space of 1.50 mtrs. as prescribed by the Development Control Regulations would be maintained around the building. Considering the hardship involved in relocating the existing shops, the Municipal Commissioner has condoned the deficiency of providing 8 parking spaces under Regulation 64-B of the Development Control Regulations. An I.O.D. was issued on 5th August, 2003 following which, on 14th October, 2003 a commencement certificate was issued upto the plinth level. A certificate was issued on 19th January, 2004 for utilization of TDR following which amended plans have been sanctioned by the Building Proposals Department. A further commencement certificate was granted for a building comprising of ground floor and three upper floors.

3. Having perused the affidavit in reply filed on behalf of the

Municipal Corporation, we are of the view that no case for interference under Article 226 has been made out. From the affidavit in reply, it is clear that the set back area in respect of the road has been cleared of encroachments and has been handed over to the Municipal Corporation. The required open space is also to be maintained under the sanctioned building plans. The only grievances thus made out in the petition and in the submissions before the Court, therefore, do not subsist. The petition is, in the circumstances, dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD,
J.